

November 29, 2005

The Honorable Emily Stover DeRocco
Assistant Secretary for Employment and Training
United States Department of Labor
Employment and Training Administration
200 Constitution Avenue, NW, S2307
Washington, DC 20210

Dear Ms. DeRocco:

The New York State Department of Labor (NYSDOL), as the administrative entity of the Workforce Investment Act (WIA) in New York State, is submitting for approval five general waivers of statutory and regulatory requirements under WIA as described in the attached forms. These waivers have been developed in accordance with the provisions set forth in Section 189(i) of the WIA and Sections 661.400, 661.410 and 661.420 of the Rules and Regulations implementing WIA.

The Department notified its local workforce boards of its intent to pursue these five waivers and invited their feedback. The Department also published notice of these waivers in the New York State Register for a 15-day public comment period and also posted the draft waivers on its [workforcenewyork](http://workforcenewyork.com) website. A number of our local workforce boards sent letters indicating their support of the Department's pursuit of these waivers. No negative comments were received related to these waivers during the public comment period.

We believe these waivers support the continued success of our state and local partnership in serving the workforce development needs of individuals and businesses in New York State by providing flexibility and enhanced service options that allow for improved deployment of resources at a time when the demand for services is increasing and resources are limited. We look forward to your approval of these waivers.

Sincerely,



Margaret M. Moree
Deputy Commissioner
for Federal Programs

Attachments

cc: Commissioner Angello

**New York State
Workforce Investment Act
Waiver Request**

Transfer of Up to 25 Percent of the Governor's 25 Percent Reserve for Statewide Rapid Response Activities to Support Statewide Workforce Investment Activities

The New York State Department of Labor, as the administrative entity of the Workforce Investment Act (WIA) in the State of New York, submits this request for a waiver of 20 CFR 665.320(d)(2), for funds reserved for allowable state-level activities under WIA Section 133(a)(2), to allow the transfer of up to 25 percent of the Governor's 25 percent reserve for statewide Rapid Response activities to support statewide workforce investment activities. The funds would be utilized only for program costs allowable under WIA Section 134(a) and not administration as described in Section 134(a)(3)(A)(i) and (B).

This transfer would allow the State to provide additional funding toward the development of statewide-level activities, including incumbent worker programs to improve job retention and avoid additional layoffs.

The reduction of available funding in the Governor's Rapid Response reserve will not prevent the State from fulfilling its responsibilities related to Rapid Response activities.

Since PY 2001, as a matter of State policy, the State of New York has used a portion of the Governor's 25 percent reserve for statewide Rapid Response activities to make supplemental Dislocated Worker funds available to local areas for enhanced services to dislocated workers. If the proposed waiver is approved, there will be no change in this policy.

This waiver will apply to Program Year 2005 and subsequent years.

A. Statutory or Regulatory Requirements to be Waived

20 CFR 665.320(d)(2) restricts states from using 25 percent Rapid Response funds to directly fund state-level activities, including incumbent worker training.

B. Goals and Expected Programmatic Outcomes if Waiver is Granted

This waiver will allow for the continuation of the state-local partnership that provides Statewide Activities funds to meet real-time business training needs.

The most immediate outcome of this requested transfer will be to increase the number of incumbent workers who would not otherwise be able to be trained. This waiver will allow the State to more effectively direct funding where it is most needed to provide incumbent worker training activities.

C. State or Local Statutory or Regulatory Barriers

There are no State or local statutory or regulatory barriers to implementing the proposed waiver.

D. Description of Individuals Impacted by the Waiver

This waiver would support state-level activities including but not limited to programs that provide training to incumbent workers.

E (i). Description of the process(es) used to monitor the progress in implementing the waiver

New York State monitors incumbent worker training programs funded through state-level activities funds through the Financial Oversight and Technical Assistance (FOTA) Unit. Financial oversight reviews are conducted to ensure reported expenditures and spending are consistent with terms and conditions governing the agreements as well as compliance with applicable WIA law, and rules and regulations.

These monitoring activities will be extended to cover any additional activities, including incumbent worker training programs whose funding was made possible by this waiver.

E (ii). Description of the process(es) used to provide notice to any Local Board affected by the waiver

Should the waiver be granted, the Department will issue a Technical Advisory (TA) that will be disseminated to Chairpersons of Local Workforce Investment Boards, Chief Elected Officials, WIA Grant Recipients, WIA Fiscal Agents and WIA Local Area Contact Persons. The TA will also be posted on the Workforce New York web site (www.workforcenewyork.com).

E (iii). Description of the process(es) used to provide any Local Board affected by the waiver an opportunity to comment on the request

This request was developed as a result of concerns expressed by local areas. Notice of the waiver request was published in the *New York State Register* and posted on the Workforce New York web site (www.workforcenewyork.com). A 15-day comment period was allowed. All comments were taken into account when developing the final draft of this request.

E (iv). Description of the process(es) used to ensure meaningful public comment, including comment by business and organized labor, on the waiver

Notice of the waiver request was published in the *New York State Register* and posted on the Workforce New York web site (www.workforcenewyork.com). A 15-day comment period was allowed. All comments were taken into account when developing the final draft of this request.

New York State Workforce Investment Act Waiver Request

Allowing Local Areas to Use, on a Voluntary Basis, Up to 10 Percent of Local Area Formula Allocation Funds to Support Local Incumbent Worker Training Programs

The New York State Department of Labor, as the administrative entity of the Workforce Investment Act (WIA) in the State of New York, submits this request for a waiver of WIA sections 129(c) and 134(b). The waiver will allow Local Areas to use, on a voluntary basis, up to 10 percent of Local Area formula allocation funds to support local incumbent worker training programs. The funds would be used only for program purposes allowable under Section 134(a), not administration as indicated in Section 134(a)((3)(A)(i) and (B).

Local Areas will submit a request to the State for approval prior to implementing this action. The transfer will enhance the ability of the State and Local Areas to carry out WIA Title IB adult, youth, and dislocated worker activities. Funds will continue to be tracked by funding stream and will not be combined, losing individual funding stream identity.

A. Statutory or Regulatory Requirements to be Waived

WIA section 129(c) restricts the use of local area formula allocated funds to youth employment activities; and, section 134(b), restricts the use of local area formula allocated funds to serve employed workers as opposed to incumbent workers, which is the latitude afforded to the states in conducting statewide-level activities for this target population.

B. Goals and Expected Programmatic Outcomes if Waiver is Granted

There are several benefits to be derived by the approval of this waiver request.

- It will help promote the development of local projects to improve job retention and avoid additional layoffs.
- It will provide greater flexibility to Local Boards in designing and implementing WIA programs.
- It will improve the ability of Local Boards to respond to changes within their Local Areas.
- It will contribute to alignment of New York State's local level workforce development strategy with the Governor's vision for an improved workforce system.
- It will enable more customers to have access to essential services.

- It will increase services to higher skilled and higher wage businesses, which may or may not otherwise be served by the local workforce system.

Finally, it would enhance alignment of New York State's workforce development strategies with USDOL's national strategic priorities, including enhanced integration of workforce investment systems to be able to respond better to the needs of customers; and provide greater flexibility in structuring workforce investment systems.

C. State or Local Statutory or Regulatory Barriers

There are no State or local statutory or regulatory barriers to implementing the proposed waiver.

D. Description of Individuals Impacted by the Waiver

The most immediate outcome of the requested transfer will be to increase the numbers of incumbent workers who would not otherwise be trained.

E (i). Description of the process(es) used to monitor the progress in implementing the waiver

New York State monitors its 33 local areas through the Financial Oversight and Technical Assistance (FOTA) Unit and Program Specialists (program monitoring). Financial oversight reviews are conducted in accordance with the FOTA Review Guide and consist of reviews in areas such as financial management, cost allocation, procurement, property, One-Stop system cost allocation, and program year closeouts. Monthly analyses of reported expenditures are conducted to ensure that local areas are not over- or under-expending and to determine if spending is commensurate with services provided. Program Specialists use newly revised guides covering Adults, Dislocated Workers, Youth, Summer Youth, Governance and Sub-recipients, as well as monthly desk reviews of services and expenditures.

The State monitoring process results in feedback to the local area, with regard to program performance. Through the use of Local WIA Quarterly Reports and information that includes rosters of individuals in each of the measures, field staff engages local areas in dialogue related to data quality and performance improvement strategies.

New York State will modify its current monitoring policy and procedures to include the use by local areas of 10 percent of their formula allocation to fund incumbent worker training programs. Monitoring and feedback will continue as described above.

E (ii). Description of the process(es) used to provide notice to any Local Board affected by the waiver

Should the waiver be granted, the Department will issue a Technical Advisory (TA) that will be disseminated to Chairpersons of Local Workforce Investment Boards, Chief Elected Officials, WIA Grant Recipients, WIA Fiscal Agents and WIA Local Area Contact Persons. The TA will also be posted on the Workforce New York web site (www.workforcenewyork.com).

E (iii). Description of the process(es) used to provide any Local Board affected by the waiver an opportunity to comment on the request

This request was developed as a result of concerns expressed by local areas. Notice of the waiver request was published in the *New York State Register* and posted on the Workforce New York web site (www.workforcenewyork.com). A 15-day comment period was allowed. All comments were taken into account when developing the final draft of this request.

E (iv). Description of the process(es) used to ensure meaningful public comment, including comment by business and organized labor, on the waiver

Notice of the waiver request was published in the *New York State Register* and posted on the Workforce New York web site (www.workforcenewyork.com). A 15-day comment period was allowed. All comments were taken into account when developing the final draft of this request.

**State of New York
Workforce Investment Act
Waiver Request**

Use of Individual Training Accounts by Youth Program Participants

The New York State Department of Labor (NYSDOL), as the administrative entity of the Workforce Investment Act (WIA) in New York State, submits this request for a general waiver of the limitations on Individual Training Account (ITA) use to allow them to be utilized, where determined appropriate, for youth program participants. The State fully realizes the importance of the 10 required youth program elements and their positive and lasting impact. However, there are times in youth service delivery when use of an ITA is appropriate and necessary. A waiver allowing ITA use for youth will maximize the delivery of services by enabling staff to use this option for training if and when it is the best service option. This will also eliminate the need for dual enrollment of older youth in Adult programs and provide broader options for younger and out-of-school youth. In addition to enhancing the available service options and customer choice, the ability to provide ITAs will reduce tracking, reporting, and paperwork that come with dual enrollment, resulting in a more efficient service delivery.

This waiver will apply to Program Year 2005 and subsequent years.

A. Statutory or Regulatory Requirements to be Waived

WIA Sections 129 and 134(d)(4)(G) and 20 CFR 664.510.

B. Goals of the Waiver and Expected Programmatic Outcomes if Waiver is Granted

The goals of the waiver are to expand service options for youth, increase program flexibility, enhance customer choice, improve staff efficiency, and decrease paperwork, tracking and dual enrollment (older youth).

C. State or Local Statutory or Regulatory Barriers

There are no State or local statutory or regulatory barriers to implementing the proposed waiver.

D. Description of the Individuals Impacted by the Waiver

The waiver will directly impact WIA-eligible youth, defined by the legislation as individuals who are not less than age fourteen and not more than age twenty-one, are low-income, and are one or more of the following: deficient in basic literacy skills, school dropouts, homeless, runaways, foster children, pregnant, a parent, an offender, or an individual who requires additional assistance to complete an educational program or to secure and hold employment.

E (i). Description of the process(es) used to monitor the progress in implementing the waiver

New York State monitors its 33 local areas through the Financial Oversight and Technical Assistance (FOTA) Unit and Program Specialists (program monitoring). Financial oversight reviews are conducted in accordance with the FOTA Review Guide and consist of reviews in areas such as financial management, cost allocation, procurement, property, One-Stop system cost allocation, and program year closeouts. Monthly analyses of reported expenditures are conducted to ensure that local areas are not over- or under-expending and to determine if spending is commensurate with services provided. Program Specialists use newly revised guides covering Adults, Dislocated Workers, Youth, Summer Youth, Governance and Sub-recipients, as well as monthly desk reviews of services and expenditures.

The State monitoring process results in feedback to the local area, with regard to program performance. Through the use of Local WIA Quarterly Reports and information that includes rosters of individuals in each of the measures, field staff engage local areas in dialogue related to data quality and performance improvement strategies.

New York State will modify its current monitoring policy and procedures to include the use of ITAs by youth program participants. Monitoring and feedback will continue as described above.

E (ii). Description of the process(es) used to provide notice to any Local Board affected by the waiver

Should the waiver be granted, the Department will issue a Technical Advisory (TA) that will be disseminated to Chairpersons of Local Workforce Investment Boards, Chief Elected Officials, WIA Grant Recipients, WIA Fiscal Agents and WIA Local Area Contact Persons. The TA will also be posted on the Workforce New York web site (www.workforcenewyork.com).

E (iii). Description of the process(es) used to provide local boards the opportunity to comment on the waiver request

This request was developed as a result of concerns expressed by local areas. Notice of the waiver request was published in the *New York State Register* and posted on the Workforce New York web site (www.workforcenewyork.com). A 15-day comment period was allowed. All comments were taken into account when developing the final draft of this request.

E (iv). Description of the process(es) used to ensure meaningful public comment, including comment by business and organized labor, on the waiver

Notice of the waiver request was published in the *New York State Register* and posted on the Workforce New York web site (www.workforcenewyork.com). A 15-day comment period was allowed. All comments were taken into account when developing the final draft of this request.

**State of New York
Workforce Investment Act
Waiver Request**

Include Eligibility for Free/Reduced Lunch in Definition of Low-Income Individual

The New York State Department of Labor (NYSDOL), as the administrative entity of the Workforce Investment Act (WIA) in New York State, submits this request for a general waiver of the definition of Low-Income Individual as it applies to determining youth eligibility by allowing the definition to include the use of free/reduced lunch eligibility under the National School Lunch Act. A waiver will allow youth to document their income eligibility to participate in WIA youth programs through their eligibility under the National School Lunch Program. Many youth have difficulty accessing paper records to demonstrate their income eligibility. Additionally, many local area providers spend a significant amount of time assisting youth in acquiring documentation, which reduces time available for direct outreach, initial counseling with youth on program options, and other services. In many instances, youth must make repeat visits to complete the registration process, which delays the completion of their registration and diminishes service to them as customers.

Determining youth eligibility by allowing the definition of Low-Income Individual to include the use of free/reduced lunch eligibility under the National School Lunch Act will ease eligibility documentation requirements that may exclude eligible at-risk youth from WIA services, in part because documentation to verify eligibility is often difficult to obtain and verification is resource intensive.

This waiver will apply to Program Year 2005 and subsequent years.

A. Statutory or Regulatory Requirements to be Waived

WIA Section 101(25).

B. Goals of the Waiver and Expected Programmatic Outcomes if Waiver is Granted

The goals will be increases in youth access to services, efficiency of service delivery and number of youth served, and decreases in registration time and documentation burdens.

C. State or Local Statutory or Regulatory Barriers

There are no State or local statutory or regulatory barriers to implementing the proposed waiver.

D. Description of the Individuals Impacted by the Waiver

The waiver will directly impact WIA-eligible youth, defined by the legislation as individuals who are not less than age fourteen and not more than age twenty-one, are low-income and are one or more of the following: deficient in basic literacy skills, school dropouts, homeless,

runaways, foster children, pregnant, a parent, an offender, or an individual who requires additional assistance to complete an educational program or to secure and hold employment.

E (i). Description of the process(es) used to monitor implementation of the waiver

New York State monitors its 33 local areas through the Financial Oversight and Technical Assistance (FOTA) Unit and Program Specialists (program monitoring). Financial oversight reviews are conducted in accordance with the FOTA Review Guide and consist of reviews in areas such as financial management, cost allocation, procurement, property, One-Stop system cost allocation, and program year closeouts. Monthly analyses of reported expenditures are conducted to ensure that local areas are not over- or under-expending and to determine if spending is commensurate with services provided. Program Specialists use newly revised guides covering Adults, Dislocated Workers, Youth, Summer Youth, Governance and Sub-recipients, as well as monthly desk reviews of services and expenditures.

The State monitoring process results in feedback to the local area with regard to program performance. Through the use of Local WIA Quarterly Reports and information that includes rosters of individuals in each of the measures, field staff engage local areas in dialogue related to data quality and performance improvement strategies.

New York State will modify its current monitoring policy and procedures to include the expanded definition of Low-Income Individual. Monitoring and feedback will continue as described above.

E (ii). Description of the process(es) used to provide notice to any Local Board affected by the waiver

Should the waiver be granted, the Department will issue a Technical Advisory (TA) that will be disseminated to Chairpersons of Local Workforce Investment Boards, Chief Elected Officials, WIA Grant Recipients, WIA Fiscal Agents and WIA Local Area Contact Persons. The TA will also be posted on the Workforce New York web site (www.workforcenewyork.com).

E (iii). Description of the process(es) used to provide Local Boards the opportunity to comment on the waiver request

This request was developed as a result of concerns expressed by local areas. Notice of the waiver request was published in the *New York State Register* and posted on the Workforce New York web site (www.workforcenewyork.com). A 15-day comment period was allowed. All comments were taken into account when developing the final draft of this request.

E (iv). Description of the process(es) used to ensure meaningful public comment, including comment by business and organized labor, on the waiver

Notice of the waiver request was published in the *New York State Register* and posted on the Workforce New York web site (www.workforcenewyork.com). A 15-day comment period was allowed. All comments were taken into account when developing the final draft of this request.

**State of New York
Workforce Investment Act
Waiver Request**

Inclusion of Youth Follow-Up Services as a Youth Program Framework Service

The New York State Department of Labor (NYSDOL), as the administrative entity of the Workforce Investment Act (WIA) in the State of New York, submits this request for a general waiver to allow follow-up services to be provided as part of the youth program design framework services, without need for a separate competitive procurement process.

Section 123 of WIA stipulates that eligible providers of youth services be selected by awarding a grant or contract on a competitive basis. Part 664.405 of the WIA Regulations further clarifies that this competitive procurement requirement does not apply to the design framework component such as services for intake, objective assessment and the development of individual service strategy, when these services are provided by the grant recipient/fiscal agent. Grant recipient/fiscal agents that are already providing framework services to youth (as allowed under Part 664.405) are in a better position to also provide follow-up services for these same youth. The requirement of an additional competitive bidding process for follow-up services is duplicative and burdensome. This waiver would create a more streamlined and cohesive approach to case management by allowing these providers of youth framework services to provide personal attention to each youth on a consistent basis throughout their service strategy.

This waiver will apply to Program Year 2005 and subsequent years.

A. Statutory or Regulatory Requirements to be Waived

WIA Section 123, WIA Section 117(h)(4)(B)(i), and 20 CFR Part 664.405 which require that eligible providers of youth services be selected by awarding a grant or contract on a competitive basis for all youth activities and services.

B. Goals and Expected Programmatic Outcomes if Waiver is Granted

A waiver will maximize resources by allowing grant recipient/fiscal agent staff who are already providing framework services to provide follow-up services to youth instead of requiring a separate competitive bidding process. Granting the waiver will allow for greater continuity of service and monitoring of progress of the youth as they move through the various services identified within their individual service strategy. Granting the waiver will allow for a smoother flow of data that documents the delivery of youth services, as well as the outcomes that result from youth participation, since the organization that is providing framework services will be in a better position to understand where each youth is in relationship to his or her individual service strategy, when a youth has exited a WIA service or the WIA program, and when the period for follow-up begins.

We also believe that defining follow-up as a framework service will support the implementation of common performance measures, since the framework service provider will be in the best

position to know when a WIA youth is also participating in another partner program, and therefore make a better administrative judgment as to when program completion will trigger the time period to determine a performance outcome under the new common measures.

C. State or Local Statutory or Regulatory Barriers

There is no state or local statutory or regulatory barrier to implementing the proposed waiver.

D. Description of Individuals Impacted by the Waiver

The waiver will directly impact WIA eligible youth.

E (i). Description of the process(es) used to monitor the progress in implementing the waiver

New York State monitors its 33 local areas through the Financial Oversight and Technical Assistance (FOTA) Unit and Program Specialists (program monitoring). Financial oversight reviews are conducted in accordance with the FOTA Review Guide and consist of reviews in areas such as financial management, cost allocation, procurement, property, One-Stop system cost allocation, and program year closeouts. Monthly analyses of reported expenditures are conducted to ensure that local areas are not over- or under-expending and to determine if spending is commensurate with services provided. Program Specialists use newly revised guides covering Adults, Dislocated Workers, Youth, Summer Youth, Governance and Sub-recipients, as well as monthly desk reviews of services and expenditures.

The State monitoring process results in feedback to the local area, with regard to program performance. Through the use of Local WIA Quarterly Reports and information that includes rosters of individuals in each of the measures, field staff engage local areas in dialogue related to data quality and performance improvement strategies.

New York State will modify its current monitoring policy and procedures to include the waiver to allow follow-up services to be provided as a youth program framework service as described in this request. Monitoring and feedback will continue as described above.

E (ii). Description of the process(es) used to provide notice to any Local Board affected by the waiver

Should the waiver be granted, the Department will issue a Technical Advisory (TA) that will be disseminated to Chairpersons of Local Workforce Investment Boards, Chief Elected Officials, WIA Grant Recipients, WIA Fiscal Agents and WIA Local Area Contact Persons. The TA will also be posted on the Workforce New York web site (www.workforcenewyork.com).

E (iii). Description of the process(es) used to provide any Local Board affected by the waiver an opportunity to comment on the request

This request was developed as a result of concerns expressed by local areas. Notice of the waiver request was published in the *New York State Register* and posted on the Workforce New York web site (www.workforcenewyork.com). A 15-day comment period was allowed. All comments were taken into account when developing the final draft of this request.

E (iv). Description of the process(es) used to ensure meaningful public comment, including comment by business and organized labor, on the waiver

Notice of the waiver request was published in the *New York State Register* and posted on the Workforce New York web site (www.workforcenewyork.com). A 15-day comment period was allowed. All comments were taken into account when developing the final draft of this request.